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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

NGUYEN, TUAN N

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/674,993	Applicant(s) RENDELL, JEFFREY D.	
	Examiner Tuan N. Nguyen	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6-10 and 19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 is/are allowed.
- 6) ☒ Claim(s) 11-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of species (II): Fig. 3 in the response filed March 26, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The applicant further indicates (on page 7, line 2 et seq.) that claims 1-5, 11-18 and 20 are readable on the elected species. Accordingly, claims 6-10 and 19 are hereby withdrawn from consideration.

Claim Objections

2. Claims 2-5, 12-18 and 20 are objected to because of the following informalities: "A toilet" in line 1 of each claim should be --The toilet--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 11, 13, 16, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hodges (US Patent 5,695,222).

In regard to claim 11, Hodges discloses a toilet flange assembly for connecting a toilet to a waste pipe disposed under a floor, the flange assembly comprising a flange member (10) including a first pipe section (11) having upper and lower end portions, wherein the upper end portion having an annular flange (12) and the lower end portion having a first sealing zone; an adapter member (20) connects to the flange member and includes a second pipe section having upper and lower end portions, the lower end portion of the second pipe section having a second sealing zone (see Figs. 2 and 3) and terminating in a connector member; a telescopic connection (see Fig. 3) between the flange member and the adapter member, whereby, the axial and angular positions of the flange member can be adjusted relative to the adapter member (relatively speaking); and a fluid seal (50) between the first and second sealing zones.

In regard to claim 13, the first pipe section indicated above appears to have a wall thickness that is greater at the upper end portion (about 11) proximate the annular flange than at the lower end portion (about 13) (see Fig. 2).

In regard to claims 16 and 17, the connector member indicated above comprises a pipe socket connector that is capable of being cemented onto an end of the waste pipe, wherein the second pipe section includes an interior annular shoulder formed by one of the reversed grippers (23) (see Fig. 5).

In regard to claim 20, the fluid seal indicated above comprises an "O-ring" (50) in contact with both the first and second pipe sections.

4. Claims 11-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al. (hereinafter Johnson).

In regard to claims 11 and 12, Johnson discloses a toilet flange assembly for connecting a toilet to a waste pipe disposed under a floor, the flange assembly comprising a flange member (see Fig. 4) including a first pipe section having upper and lower end portions, wherein the upper end portion having an annular flange (38) and the lower end portion having a first sealing zone; an adapter member (see Fig. 5) connects to the flange member and includes a second pipe section having upper and lower end portions, the lower end portion of the second pipe section having a second sealing zone and a connector member for connecting to a waste pipe (12); a telescopic connection between the flange member and the adapter member (since the flange member and the adapter member are threadably connected to each other and are designed for coupling toilets within four inch sewer pipes, see col. 1, line 37 et seq.), whereby, the axial and angular positions of the flange member can be adjusted relative to the adapter member (relatively speaking); and a fluid seal would be formed between the first and second sealing zones.

In regard to claims 13 and 14, the first pipe section of Johnson indicated above appears to have a wall thickness that is greater at the upper end portion proximate the annular flange (see Fig. 4) than at the lower end portion (about 36) and the upper end portion has a set of external threads (52).

In regard to claim 15, the first and second pipe sections of Johnson indicated above appears to have a greater outside diameter at the upper end portion than at the

lower end portion, the outside diameter of the second pipe section (Fig. 5) at the upper end is about reference numeral (30).

5. Claims 11, 12 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Farrell.

In regard to claims 11 and 12, Farrell discloses a toilet flange assembly for connecting a toilet to a waste pipe disposed under a floor, the flange assembly comprising a flange member including a first pipe section having upper and lower end portions, wherein the upper end portion having an annular flange (1) and the lower end portion having a first sealing zone (see Fig. 1); an adapter member (4) connects to the flange member and includes a second pipe section having upper and lower end portions, the lower end portion of the second pipe section having a second sealing zone and a connector member (the other end of fitting 3 that would connect to a waste pipe); a telescopic connection between the flange member and the adapter member since the flange member is threadably attached to the adapter member, whereby, the axial and angular positions of the flange member can be adjusted relative to the adapter member (relatively speaking); and a fluid seal (provided by members 5 and 8) between the first and second sealing zones.

In regard to claim 18, the second pipe section of Farrell includes an elbow (see Fig. 1) would connect the second sealing zone with the connector member since the structure's of Fig. 1 of Farrell is similar to that of the applicant's elected invention of Fig. 3.

Allowable Subject Matter

6. Claims 1-5 are allowed over the prior art of record.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 11-17 and 20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,634,034. Although the conflicting claims are not identical, they are not patentably distinct from each other because the toilet flange assembly, as claimed in claims 11-17 and 20 of the instant application, includes is a broader version of that being claimed in claims 1-11 of U.S. Patent No. 6,634,034.

Conclusion


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited on form PTO-892 are those that were cited in the parent case or relate to the elbow of the instant claimed invention.

Art Unit: 3751

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 703-306-9046. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tuan N. Nguyen
Primary Examiner
Art Unit 3751
6/9/04

TN